

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

**UNITED STATES OF AMERICA,**

**v.**

**ALBERTO ALANIZ**

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**CRIMINAL NO: M-13-804**

**MOTION FOR ISSUANCE OF ORDER OF FORFEITURE AT SENTENCING**

COMES NOW, the United States by and through Kenneth Magidson, United States Attorney for the Southern District of Texas, Mary Ellen Smyth, Assistant United States Attorney, Defendant Alberto Alaniz and his attorney, and submit this Motion for Issuance of an Order of Forfeiture as to Property “A” pursuant to Fed. R. Crim. P. 32.2 (c)(2) in the above-styled case.<sup>1</sup>

In support thereof, the United States sets forth the following:

1. On June 6, 2014 an Agreed Preliminary Order of Forfeiture was entered by the Court as to Alberto Alaniz ordering him to forfeit to the United States of America any interest in the real property and improvements at:

- A. a 5.00 acre tract of land out of Lot 40-9, WEST ADDITION TO SHARYLAND SUBDIVISION, Hidalgo County, Texas, according to the map recorded in volume 1, Page 46, Map Records in the Office of the County Clerk of Hidalgo County, Texas, reference to which is here made for all purposes, and being more particularly described by metes and bounds as follows, to wit:

COMMENCING at the Northwest corner of Lot 40-9, said point being on the centerline intersection of Mile 5 North Road and Mayberry Road, thence South with and along the centerline of Mayberry Road, a distance of 987.14 feet to a point for the Northwest corner and point of beginning of this description;

THENCE, East a distance of 790.0 feet to a point for the Northeast corner, said point being on the West right of way line of existing irrigation canal;

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<sup>1</sup> The United States no longer seeks the criminal forfeiture of Property “B”, and a Release of Lis Pendens will be filed in the official records of Hidalgo County.

THENCE, South with and along said West right of way line of existing irrigation canal, a distance of 282.86 feet to a point for the Southeast corner, said point also being the North right of way line of existing irrigation canal;

THENCE, West with and along said North right of way line of existing irrigation canal, a distance of 790.0 feet to a point for the Southwest corner, said point being on the centerline of Mayberry Road;

THENCE, North with and along the centerline of Mayberry Road, a distance of 282.86 feet to a point for the Northwest corner and POINT OF BEGINNING.

- B. The West One (1.0) acre, more or less, (the West 145.2 feet) of Lot 145, BENTSEN GROVES SUBDIVISION in Porcion 50, Hidalgo County, Texas, according to the map or plat of record in Volume 7, Page 13, Map Records of Hidalgo County, Texas; said tract is more particularly described by metes and bounds as follows:

COMMENCING at the Northwest corner of said Lot 145 for the Northwest corner hereof and the POINT OF BEGINNING;

THENCE, South 81 degrees, 10 minutes East, inside 3 Mile Line Rd. and along the North line of said Lot 145, a distance of 145.20 feet to a point for the Northeast corner hereof;

THENCE, South 8 degrees, 50 minutes West, parallel to the West line of said Lot 145, a distance of 40 feet pass a found ½" iron rod on the South right of way line of 3 Mile Line Rd., at a total distance of 300.0 feet to a found ½" iron rod for the Southeast corner hereof;

THENCE, North 81 degrees, 10 minutes West, parallel to the North line of said Lot 145, a distance of 112.7 feet pass a found ¾" iron pipe on the East right of way line of Bentsen Palm Drive, at a total distance of 145.2 feet in all to lit set ½" iron rod inside Bentsen Palm Drive and on the West line of said Lot 145 for the Southwest corner hereof;

THENCE, North 8 degrees, 50 minutes East, inside Bentsen Palm Drive and along the West line of said lot 145, a distance of 300.0 feet in all to the POINT OF BEGINNING, of which the North 40 feet lie in 3 Mile Line Rd. and the West 32.5 feet lie in Bentsen Palm Drive.

SAVE AND EXCEPT that part conveyed to the State of Texas by Deed dated February 28, 2006, filed March 15, 2006 under document Number 2006-1590516, Official Records, Hidalgo County, Texas.

(Dkt. No. 176)

2. Notice of the forfeiture and the intent of the United States to dispose of the Subject

Property in accordance with the law and as specified in the Amended Preliminary Order of Forfeiture was posted on an official government internet site ([www.forfeiture.gov](http://www.forfeiture.gov)) for at least thirty (30) consecutive days beginning on June 12, 2014, and notified all third parties of their right to petition the Court within sixty (60) days of the first day of publication. (Dkt. No. 178)

3. Notice of the forfeiture and of the intent of the United States to dispose of the subject Property in accordance with the law and as specified in the Preliminary Order of Forfeiture was served upon the defendant, ALBERTO ALANIZ, of the subject real property in the criminal matter by and through his attorney of record via electronic filing (Dkt No. 176) and the United States Internal Revenue Service by personal service on August 27, 2014 as evidenced by Motion Ex. A attached hereto and incorporated by reference.

4. Notice of the forfeiture and of the intent of the United States to dispose of the subject Property in accordance with the law and as specified in the Preliminary Order of Forfeiture was posted and served upon Subject Property “A” through the United States Internal Revenue Service on July 2, 2014. (Dkt. No. 208)

5. On July 18, 2014, City of Alton, Mission C.I.S.D., South Texas I.S.D. La Joya I.S.D. and South Texas College (hereinafter referred “Taxing Authorities”) filed an ancillary claim for the ad valorem taxes due and owing on the Defendant Real Property. (Dkt. No.179) The Government recognizes the interest of Hidalgo County et. al., to the extent of the ad valorem taxes due and owing on the Subject Real Property “A”.

4. On July 22, 2014, Hidalgo County and Hidalgo County Drainage District #1 filed an ancillary claim for the ad valorem taxes due and owing on the Defendant Real Property. (Dkt.

No. 181) The Government recognizes the interest of Hidalgo County et. al., to the extent of the ad valorem taxes due and owing on the Subject Property “A”.

5. On August 8, 2014, TD Development, L.C. has filed its petition in the ancillary phase of this criminal proceeding asserting its secured interest in Subject Property “A”. (Dkt. No. 191) The United States recognizes the secured lien interest of TD Development, L.C. in Subject Property “A” to the extent of the amount due and owing under the terms of the promissory note submitted with the petition.

6. On February 11, 2015, San Juanita Alaniz, wife of Defendant Alberto Alaniz, filed her Petition claiming an interest in Subject Property “A”. (Dkt. No. 212) The United States opposes her petition and will file its Motion to Strike her claim in accordance with Rule 32.2 (c)(1)(A) of the Federal Rules of Criminal Procedure.

7. Rule 32.2(b)(4)(A) and (B) of the Federal Rules of Criminal Procedure provides “[a]t sentencing .... the preliminary forfeiture order becomes final as to the defendant,” and “[t]he court must include the forfeiture order, directly or by reference, in the judgment....”

Accordingly, the United States requests that the Agreed Preliminary Order be made final as to Defendant Alaniz and that the forfeiture of Subject Property “A” be made part of his sentence and included in his judgment. Upon resolution of the Petition of San Juanita Alaniz, the United States will submit its Motion for Final Order of Forfeiture as to Subject Property “A”.

Respectfully Submitted,

KENNETH MAGIDSON  
UNITED STATES ATTORNEY

BY: s/Mary Ellen Smyth  
Mary Ellen Smyth  
Assistant U.S. Attorney

**CERTIFICATE OF SERVICE**

On this the 20<sup>th</sup> day of March, 2015, the forgoing Motion for Issuance of a Final Order of Forfeiture was sent to Defendant by and through his attorney of record, Librado Keno Vasquez via electronic filing.

S/Mary Ellen Smyth  
MARY ELLEN SMYTH  
Assistant United States Attorney